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The University, the Community and the Law

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The University, The Community And The Law

Text of an address by Dean William B. Harvey, Indiana University School of Law, Bloomington, Ind., in which the speaker examines dangerous stresses and divisions between students, today's university, the vast realm of the layman community and the profession of law, and urges a rededication to ideals of equity and justice under law to bridge the growing gap.



Dean Harvey

Law Day is, in the words of President Nixon, "an occasion for rededication to the ideals of equality and justice under law." The President, in his 1969 Law Day Proclamation, continues,

"There was never a greater need for such rededication. Events of recent years—rising crime rates, urban rioting, and violent campus protests have impeded rather than advanced social justice."

The President's reference to recent events on the campuses of many colleges and universities prompts me to use this Law Day occasion to share with you some reflections on three institutions in which I know we have a common interest—the university, the community, and the law.

I have spent most of my life in a university. I feel a deep commitment to its essential values and purposes, but I shall not dwell on these. With recognition of incompleteness and of the consequent risk of distortion, I want to reflect briefly with you on some features of the modern university that are related most directly to the ferment on many campuses today. I shall do this by trying to sketch in rough profile the student activist who sees most clearly, not the historic strengths and contributions of the university, but its current inadequacies and weaknesses.

Profile of the Activist

The student activist is an idealist. He expresses his ideals in deep concerns over his society, his university, and his relation to each. Among those concerns there are, I believe, four predominant issues—war, race, poverty, and self. The

activist sees American and Asian blood being spilled and resources consumed in a war which fills him with moral indignation and revulsion. I do not believe, however, that his concern over war is confined to the rice paddies of Vietnam. Rather, he rejects the belief that resort to violence in pursuit of national interests can lead to the decent society he seeks. The student activist rejects the age-old fetish of race and reacts with growing anger and frustration to those aspects of our society which led a recent Presidential Commission to declare that it is a racist society. The student activist is not unaware of the general affluence of our society. Indeed, the typical white student activist has come from an upper middle class background. But he sees clearly that intransigent stratum of brutal and despairing need that underlies the general affluence. Finally, the student activist is deeply concerned with his own personal identity in a mass society characterized more frequently by the computerized grade report or credit card, by polluted streams and foul air, than by an awareness that the fullness of man's life is in his individual awareness and expression and in the love and compassion he directs toward others.

While I have stated these as separate concerns of the student activist, he sees them as profoundly connected. He is fully aware of the fact that the war in Southeast Asia pits the forces of the richest nation of the world, which is predominantly white, against a tiny, impoverished, and colored nation. He sees, as well, that the draft calls, the agonies, and the deaths in Vietnam have

Editor's Comment: Since this issue is the Law Day USA issue of the Arkansas Lawyer, search was made for an outstanding related article. Dean Harvey was awarded the 1969 "Judge Edward R. Finch Law Day USA Speech Award" of the American Bar Association for this Law Day address before the Knox County Bar Association at Vincennes, Indiana. Our readers will agree that our search was most successful. Dean Harvey received his B.A. at Wake Forest in 1943; his J.D. at Michigan in 1949. He was a Post-doctoral Fellow at Heidelberg in 1955-56.

He served in the U.S. Navy, 1943-46. Of his many honors and accomplishments, perhaps the most unusual is that he was Professor of Law and Dean of the Faculty of Law, University of Ghana, 1962-64. Author of many law articles and books, he published "Law and Social Changes in Ghana", Princeton University Press, in 1966. He has been Dean at the Indiana University School of Law since 1966. We are indebted to Dean Harvey and the Res Gestae, the official publication of the Indiana State Bar Association, for permission to publish the article.

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fallen especially heavily on Black Americans. He is keenly aware that the flow of national resources into the military budget makes it appear difficult to commit adequate funds to programs designed to alter historic patterns of racial disadvantage, to eliminate the cancerous blight of our cities, or to move vigorously to end the pollution of our environment. And all these factors, which the student activist regards as dehumanizing, bring into sharp focus his alienation, his difficulty in identifying himself with a society he regards as excessively materialistic, hypocritical, and insensitive to the basic needs and values of the human personality.

You may reasonably observe that these concerns go to general features of the society. Why then does the activist direct his angry protest toward the university? It is unduly simplistic to reply that he attacks the university because he is there and the university is the readiest object of his frustrations, his moral indignation, and his demand for change. Surely this reply is an appropriate part of the answer. The larger part, however, is that the activist sees the university, the faculty, and many of the students as compliant, uncritical supporters of government policy and social practice he sees as corrupt and oppressive.

Arrogance and Intolerance

In sketching this profile of the student activist, my purpose has been to describe—not to justify. I have stressed the student's deep concern over the world he confronts. I believe this stress is justified and that the concern projects a truly operative idealism. To complete this rough profile of the student activist, however, I should mention other characteristics. That the student activists is impatient is not surprising; if patience is a virtue, it is one to which few of the young people of any generation have been able to make a strong claim. But simple impatience is too often converted by our current students into a pervasive, simplistic demand for instant solutions to complex social problems. Among other characteristics, I should mention the moral arrogance, the intolerance of viewpoints different from his own, and the thinly disguised core of authoritarianism which are so easily detected in many of the student activists. Finally, I should mention the widespread disillusionment with rationality as a path toward solution of human problems and the apparently growing belief that freely expressed emotion is an adequate substitute.

In sketching this profile of the student activist, I recognize the risk of over-generalization. I know that student activists do not spring from a common mold. Their sharing in marked degree the characteristics I have suggested may justify, however, this projection of a single profile.

The Silent Majority

Since I have attempted to describe only the student activist, you may ask "Where stands the silent majority of our students?" I wish I could feel greater assurance in trying to answer that question. I can only speculate. I suspect, however, that while the great majority of our students feel repelled in varying degrees by the tactics of activist groups, they share in very large measure the concerns and the ideals of the activists. The differences are less in kind than in degree of commitment, but there are surely important differences in accepted tactics. Yet when the so-called moderate students have reason to believe that the activists have been dealt with unduly harshly, they are more likely to identify, I believe, with the activists whose goals they approve and whose courage they respect than with that authority which appears harsh, repressive, and intransigent.

Attitudes of the Community

As a man of the university, I have tried to describe some of our students. Now as a man of the community, I want to speak briefly of the developing attitudes there. Despite my longstanding commitment to the university, I reflect, as do you, many of the attitudes of a broader community. Like most of you, I have passed the fateful age of thirty and thereby have become suspect. Like you, I pay my taxes to support the schools and universities, which are so frequently challenged today, and have already sent my own children to study in them. Like you, I recall clearly the barbarisms we fought against in the Second World War and therefore I have difficulty in accepting a view that would commit us to impotence in the face of international aggression. And also like you, I am sure, I recognize that viable solutions to complex social problems are not produced instantaneously even by men of the best of wills.

While I identify myself with much of the perplexity with which the broader community views protest and disturbance on university and college campuses, I also feel a deep concern over some of the attitudes I see developing in the community. These attitudes, it

seems to me, too frequently and easily reject the possibility of a useful and creative student voice in the making of decisions, within the university and outside it, which affect vitally the lives of young people. They seem too frequently to indulge the assumption that the best response to campus protest is vigorous repression, rather than an effort to understand the causes and a concerned commitment to curing basic social ills. Before we yield to any temptation to deny these ills and to assert that all is well, let us honestly ask ourselves some questions: Are we convinced that our involvement, with the loss of life and the expenditure of resources, in Vietnam is justifiable? Are we satisfied that substantial justice has been done to the Black man in America? Can we comfortably deny the poverty and degradation of the urban ghettos, of Appalachia, and of parts of the rural South? And are we ourselves satisfied that our lives could not be enriched by a reaffirmation of belief that in a profound sense we are our brother's keeper and therefore must extend to him more readily the hand of compassion and love?

Demands of Legal Institutions

I have spoken of the university and of the community. May I turn now to the law whose profession binds us together. I need not emphasize to you the intimate connections which tie the institutions of the law to the university, to its activist students, and to the community. Our legal institutions structure and provide much of the support for higher education. But our legal institutions also demand from young people their service, perhaps even their lives, in a war they detest. Our legal institutions serve far more responsively the needs of an affluent corporate and middle-class society than those of the disadvantaged. We delude ourselves if we fail to recognize that the view of the law, of lawyers, of courts, and of police officers is totally different in the urban ghetto and on many campuses from what is in the comfortable suburb. In the context of our discussion here, we must recognize that it is the agencies of the law to which the community seems increasingly inclined to turn to deal with protection on the campuses.

If we appreciate these interconnections, what view ought we to take of campus unrest and of the university's and the community's response to it? What counsel can we, as lawyers and therefore peculiarly the custodians of a long, humane tradition, offer to the

universities and their students, to our fellow citizens, and indeed to ourselves. In conclusion, may I offer some suggestions on the counsel I would offer.

Public Order Must Prevail

To the disruptive student activists, I would say: "Your threaten perhaps unwittingly the underpinning of law itself. The basis of legal order is the monopoly of legitimate force reserved to those who act for the commonwealth. When private individuals or groups claim entitlement to use force to sanction their own demands, however noble they conceive their aims to be, the basic principle of law and public order is challenged. Without that order, without the civilizing restraints of law, the lot of man today would be no less 'solitary, poor, nasty, brutish, and short' than when Thomas Hobbes first used these words to demonstrate the necessity of civil government."

To the student activist, as well, I would offer the counsel of tolerance and moderation. I would not say "Compromise or abandon your ideals," for from the driving power of these ideals can come a nobler society and a richer individual life. But those ends are in fact repudiated by any individual or group which claims the right to enforce on others its own orthodoxy. If life in America is to retain or recapture its richness and diversity, if the dehumanization of enforced conformity is to be avoided, a measure of tolerance, indeed of respect, must be extended not merely to those of like persuasion but also to those with whom we profoundly disagree. Judge Learned Hand described this spirit of moderation in these words:

"It is the temper which does not press a partisan advantage to its bitter end, which can understand and will respect the other side, which feels a unity between all citizens—real and not the factitious product of propaganda—which recognizes their common fate and their common aspirations—in a word, which has faith in the sacredness of the individual."

To the student activist, therefore, I would not urge the compromise of ideals or the suppression of protest. I would urge, however, rejection of violence and re-commitment to this spirit of moderation.

Need Dedication to Truth

To my colleagues in the universities I would offer these words of counsel. We need to rededicate ourselves to the basic functions of a university—to the unswerving search for truth and to

instilling in our students an unquenchable thirst for it. If we serve those functions well, the university will not be—today or at any time—an uncritical service station to a complacent society. It will probe objectively and critically in its research and teaching the unknown outreaches of the physical world and the dark recesses of our society in which lurk prejudice, ignorance, oppression and injustice. If the university does that in proper measure, its relation to the community will often be uneasy for the critique of truth is often disturbing.

To my associates in the university I would also say that if we maintain a true university, it must be a community which invites and assures real participation to all its members. Membership in that community must include all who share its purposes—students, faculty, and administrators. We must, therefore, seek new ways to permit all members of the community to make their creative contributions to its governance and its functions.

Finally, to the university community, I would say that it is not a privileged enclave in which reliance on reasoned persuasion can be abandoned and the rule of force tolerated with any less tragic consequences than in the general society. I believe, therefore, that the time has come, indeed has passed, when the university must make clear beyond question that violence and intimidation will not be tolerated, however worthy the cause in which they are invoked. As a university teacher and administrator, I am prepared to say with President Kennedy, "We will not fear to negotiate, but we will never negotiate from fear." I know no surer way for the university to lose its soul than for it to capitulate to the rule of force—from outside the university or inside it.

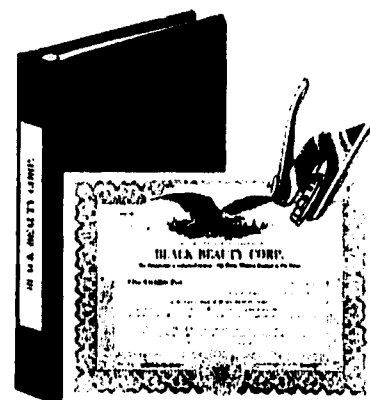
Demand Rejection of Violence

And now to you, as members of the larger community but particularly as men of the law, I would offer this counsel. A demand that university students abjure violence cannot be fully sustained by a society that is itself committed to violence, whether that violence is reflected in international belligerence or in less obvious and more subtle ways—by that pernicious violence to the human spirit that arises out of racial prejudice, by insensitivity to the needs of men who are ground under the heel of poverty, by unequal protection of the law and grossly differential applications of police power, by violation of the physical environment with

which a generous Providence has endowed us, or by the enforced submergence of every claim to individual identity and worth in a nameless, faceless, materialistic society. The age-old reign of violence over the bodies and spirits of men must be ended. If we of an older generation are to assert effectively to our university students the claims of peaceful resolution of conflict, of order and rationality, we cannot respond to their disruption with irrationality and repression. If we actually believe in the values of order, reason, and tolerance, we must live by them. That course surely requires that we, along with the young people in the universities, examine critically our society and its institutions and act to adapt them to meet human needs. If we can do that, I believe we are entitled to hope that out of today's ferment will come not only better colleges and universities but a more just and decent society.

Law Day can become too easily an occasion for uncritical praise of our revered institutions, a mere validation of the status quo. We lawyers must always be mindful that law can become obsolete; it can be oppressive and unjust. We need to take note that on this day President Nixon has not asked simply for our commitment to law, but for a "rededication to the ideals of equality and justice under law." I believe such a rededication, if made, could become a magnificent arching bridge over the gap that separates the larger community and the law from many of our university students today.

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